



0000159144

RECEIVED  
AZ CORP COMMISSION  
DOCKET CONTROL

Transcript Exhibit(s)

2014 DEC 31 AM 10 52

Docket #(s): T-20787A-14-0367

---


---

---

---

---

Arizona Corporation Commission  
**DOCKETED**  
DEC 31 2014

DOCKETED BY 

**ORIGINAL**

Exhibit #: A1 - A3, S1

---

---

---

---



PHOENIX DEPOSITION REPORTERS®  
& VIDEOCONFERENCING

To: Docket Control

Date: December 31, 2014

Re: GC Pivotal, LLC  
T-20787A-14-0367  
Evidentiary Hearing taken on 12-30-14

## **STATUS OF ORIGINAL EXHIBITS**

***EXHIBITS FILED WITH DOCKET CONTROL***  
***(See attached exhibit index for all admitted exhibits)***

### ***EXHIBITS LATE-FILED***

#### **GC Pivotal (A Exhibits)**

A-4

Copy to: Sasha Paternoster, ALJ  
Michael Patten, Esq. – Applicant  
Matthew Laudone, Esq. – Staff

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## INDEX TO EXAMINATIONS

## WITNESSES

PAGE

JEREMY MICHAEL KISSEL, via teleconference

Direct Examination by Mr. Patten	7
Cross-Examination by Mr. Laudone	11
Examination by ALJ Paternoster	14

MATT CONNOLLY

Direct Examination by Mr. Laudone	16
-----------------------------------	----

## INDEX TO EXHIBITS

NO.	DESCRIPTION	IDENTIFIED	ADMITTED
A-1	Application	8	9
A-2	Responses to First Set of Data Requests	8	9
A-3	Responses to Second Set of Data Requests	8	9
A-4	Pending CC&N Applications in Other States (Late Filed)	9	9
S-1	Staff Report	17	18

**ORIGINAL**

**NEW APPLICATION**

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

**BOB STUMP - CHAIRMAN**  
**GARY PIERCE**  
**BRENDA BURNS**  
**BOB BURNS**  
**SUSAN BITTER SMITH**

**RECEIVED**

2014 OCT -9 P 3:38

ARIZONA CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

**DOCKETED**

OCT 09 2014

DOCKETED BY

T-20787A-14-0367

IN THE MATTER OF THE APPLICATION OF GC)  
PIVOTAL, LLC FOR A CERTIFICATE OF )  
CONVENIENCE AND NECESSITY TO PROVIDE )  
FACILITIES-BASED AND RESOLD LOCAL )  
EXCHANGE AND INTEREXCHANGE )  
TELECOMMUNICATION SERVICES AND )  
FACILITIES-BASED PRIVATE LINE SERVICE )  
IN ARIZONA )

DOCKET NO.

**APPLICATION**

**(Expedited Treatment Requested)**



GC Pivotal, LLC d/b/a Global Capacity ("GC Pivotal" or "Applicant"), through undersigned-counsel, hereby requests authority to provide facilities-based and resold local exchange, facilities-based and resold interexchange and facilities-based private line competitive telecommunications in Arizona. GC Pivotal currently holds authority to provide resold private line service in Arizona pursuant to Decision No. 73645 (February 6, 2013). However, GC Pivotal has entered into an agreement to acquire certain assets from MegaPath Corporation, including MegaPath's jurisdictional customer base in Arizona. MegaPath currently serves its Arizona customers pursuant to Decision No. 61942 (September 17, 1999), which granted facilities-based and resold local exchange and interexchange authority to MegaPath. In order to assume the assets, including the interconnection agreements necessary to provide service, and to serve the transferred MegaPath customers, GC Pivotal now requires the expanded authority requested in this Application. In support of this Application, GC Pivotal has attached as Exhibit 1 the standard form application for a certificate of convenience and necessity to provide competitive intrastate telecommunications services.

MegaPath and GC Pivotal entered into a Membership Interest Purchase Agreement dated as of September 5, 2014 (the "Agreement") whereby GC Pivotal intends to obtain certain network assets and certain customers served by those assets from MegaPath (the "Transaction"). The assets to be transferred

1 consist of MegaPath's network, composed of equipment in the company's collocation spaces (*e.g.*,  
2 DSLAMs, routers, cable, and racks), applications used to provide service, equipment related to the  
3 company's points of presence and transport, wholesale and certain direct access customers and their  
4 respective contracts, and other associated assets. MegaPath also will assign its rights in interconnection  
5 agreements necessary to provide service to GC Pivotal.

6 The Transaction will result in the assignment of certain network assets and the customers served  
7 by those assets (*i.e.*, broadband data customers) to a company with a history of providing high quality  
8 communications services. GC Pivotal's operations are overseen by a well-qualified management team  
9 with substantial telecommunications experience and technical expertise. The Transaction is structured to  
10 assure an orderly transition of customers from MegaPath to GC Pivotal. In accordance with the terms of  
11 their service contracts and the rules and procedures of the Commission and applicable state(s), affected  
12 customers will be properly notified of the Transaction and the change in their telecommunications  
13 services provider from MegaPath to GC Pivotal.<sup>1</sup> In addition, immediately following consummation of  
14 the Transaction, GC Pivotal will continue to provide service to customers with no immediate change in  
15 their rates or terms and conditions of service. The Transaction will therefore be virtually transparent and  
16 seamless to the affected customers in terms of the services they currently receive.

17 MegaPath and GC Pivotal anticipate and are working towards a closing of the Transaction on or  
18 before December 31, 2014, with the changes effective January 1, 2015. In order for GC Pivotal to be  
19 able to serve its new customers, it requests that the Commission grant it the requested additional authority  
20 no later than December 31, 2014.

21 Wherefore, GC Pivotal requests expedited approval of this Application.  
22  
23  
24  
25

---

26  
27 <sup>1</sup> The Parties intend to notify customers of the assignment of their service and contracts to GC Pivotal  
as provided in their existing service contract, or at least 30 days prior to such transfer.

1 RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of October 2014.

2 GC PIVOTAL, LLC

3  
4 By 

5 Michael W. Patten  
6 Roshka DeWulf & Patten, PLC  
7 One Arizona Center  
8 400 East Van Buren Street, Suite 800  
9 Phoenix, Arizona 85004

10 Attorney for GC Pivotal, LLC

11 Original and 13 copies of the foregoing  
12 filed this 9<sup>th</sup> day of October, 2014, with:

13 Docket Control  
14 Arizona Corporation Commission  
15 1200 West Washington Street  
16 Phoenix, Arizona 85007

17 Copies of the foregoing hand-delivered/mailed  
18 this 9<sup>th</sup> day of October, 2014, to the following:

19 Lyn Farmer, Chief Administrative Law Judge  
20 Hearing Division  
21 Arizona Corporation Commission  
22 1200 West Washington Street  
23 Phoenix, Arizona 85007

24 Janice M. Alward, Chief Counsel  
25 Legal Division  
26 Arizona Corporation Commission  
27 1200 West Washington Street  
Phoenix, Arizona 85007

Steve Olea, Director  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

By 

## **Exhibit-1**

**ARIZONA CORPORATION COMMISSION**

**Application and Petition for Certificate of Convenience and Necessity to Provide  
Intrastate Telecommunications Services**

Mail original plus 13 copies of completed application to:

For Docket Control Only:  
(Please Stamp Here)

Docket Control Center  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007-2927

Please indicate if you have current applications pending  
in Arizona as an Interexchange reseller, AOS provider,  
or as the provider of other telecommunication services.

Type of Service: \_\_\_\_\_

Docket No.: \_\_\_\_\_ Date: \_\_\_\_\_ Date Docketed: \_\_\_\_\_

Type of Service: \_\_\_\_\_

Docket No.: \_\_\_\_\_ Date: \_\_\_\_\_ Date Docketed: \_\_\_\_\_

**A. COMPANY AND TELECOMMUNICATION SERVICE INFORMATION**

(A-1) Please indicate the type of telecommunications services that you want to provide in Arizona and mark the appropriate box(s).

- ☒ Resold Long Distance Telecommunications Services (Answer Sections A, B).
- ☒ Resold Local Exchange Telecommunications Services (Answer Sections A, B, C).
- ☒ Facilities-Based Long Distance Telecommunications Services (Answer Sections A, B, D).
- ☒ Facilities-Based Local Exchange Telecommunications Services (Answer Sections A, B, C, D, E)
- ☐ Alternative Operator Services Telecommunications Services (Answer Sections A, B)
- ☒ Other Facilities-Based Private Line (Please attach complete description)

(A-2) The name, address, telephone number (including area code), facsimile number (including area code), e-mail address, and World Wide Web address (if one is available for consumer access) of the Applicant:

**GC Pivotal, LLC ("Global Capacity" or "Applicant")**  
**180 North LaSalle Street**  
**Suite 2430**  
**Chicago, IL 60601**  
**Tel: 312-673-2400**  
**Fax: 312-673-2422**



(A-3) The d/b/a ("Doing Business As") name if the Applicant is doing business under a name different from that listed in Item (A-2):

**Global Capacity**

(A-4) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Management Contact:

**Jeremy M. Kissel, General Counsel**  
**180 North LaSalle Street**  
**Suite 2430**  
**Chicago, Illinois 60601**  
**Tel: 312-673-2400**  
**Fax: 312-673-2422**  
**Email: jkissel@globalcapacity.com**

(A-5) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Attorney and/or Consultant:

**Michael W. Patten**  
**ROSHKA DeWULF & PATTEN, PLC**  
**400 East Van Buren Street, Suite 800**  
**Phoenix, AZ 85004**  
**602-256-6100**  
**602-256-6800(fax)**  
**mpatten@rdp-law.com**

(A-6) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Complaint Contact Person:

**John Nannenhorn**  
**180 North LaSalle Street**  
**Suite 2430**  
**Chicago, Illinois 60601**  
**(312) 673-2400-7824 (Phone)**  
**(312) 673-2422 (Fax)**  
**Email: jnannenhorn@globalcapacity.com**

(A-7) What type of legal entity is the Applicant? Mark the appropriate box(s) and category.

- ☐ Sole proprietorship
- ☐ Partnership:    \_\_\_ Limited,    \_\_\_ General,    \_\_\_ Arizona,    \_\_\_ Foreign
- ☒ Limited Liability Company:    \_\_\_ Arizona,    X Foreign
- ☐ Corporation:    \_\_\_ "S",    \_\_\_ "C",    \_\_\_ Non-profit
- ☐ Other, specify: \_\_\_\_\_

(A-8) Please include "Attachment A":

Attachment "A" must include the following information:

1. A copy of the Applicant's Certificate of Good Standing as a domestic or foreign corporation, LLC,

or other entity in Arizona.

2. A list of the names of all owners, partners, limited liability company managers (or if a member managed LLC, all members), or corporation officers and directors (specify).
3. Indicate percentages of ownership of each person listed in A-8.2.

Please see Attachment A.

(A-9) Include your Tariff as "Attachment B".

**The MegaPath customers that Global Capacity is acquiring from MegaPath currently receive service under individual contracts. Global Capacity will continue provide service to those customers under the existing contracts. Global Capacity's current ACC tariff includes an ICB contract provision at Page 24.**

Your Tariff must include the following information:

1. Proposed Rates and Charges for each service offered (reference by Tariff page number).  
**Global Capacity provides service under individual customer contracts. However, its existing ACC tariff does include specific rates and charges at pages 15-23 .**
2. Tariff Maximum Rate and Prices to be charged (reference by Tariff page number).  
**Global Capacity provides service under individual customer contracts. However, its existing ACC tariff does include specific rates and charges at pages 15-23. Its maximum and offered rates are the same.**
3. Terms and Conditions Applicable to provision of Service (reference by Tariff page number).  
**Global Capacity provides service under individual customer contracts. However, its existing ACC tariff does include terms and conditions at pages 4-12.**
4. Deposits, Advances, and/or Prepayments Applicable to provision of Service (reference by Tariff page number).  
**Global Capacity provides service under individual customer contracts. Global Capacity does not require deposits.**
5. The proposed fee that will be charged for returned checks (reference by Tariff page number).  
**Global Capacity provides service under individual customer contracts.**

(A-10) Indicate the geographic market to be served:



Statewide. (Applicant adopts statewide map of Arizona provided with this application).



Other. Describe and provide a detailed map depicting the area.

(A-11) Indicate if the Applicant or any of its officers, directors, partners, or managers has been or are currently involved in any formal or informal complaint proceedings before any state or federal regulatory commission, administrative agency, or law enforcement agency.

Describe in detail any such involvement. Please make sure you provide the following information:

1. States in which the Applicant has been or is involved in proceedings.
2. Detailed explanations of the Substance of the Complaints.
3. Commission Orders that resolved any and all Complaints.
4. Actions taken by the Applicant to remedy and/or prevent the Complaints from re-occurring.

In 2013, the regulatory staff of the Nevada Public Utilities Commission issued a petition for a show cause order against Global Capacity due to an incomplete annual report filing for calendar year 2012. See Nevada PUC Docket No. 13-08019. Global Capacity was ultimately fined \$50 for a late filing. See Nevada PUC Docket No. 13-10053, Procedural Order No. 3. The matter is closed, and applicant made regulatory compliance process improvements to minimize the potential of a recurrence.

Also in 2013, the Public Service Commission of West Virginia Commission Staff filed a Joint Staff Memorandum stating that Global Capacity failed to commence operations within one year after receiving its certificate of authority and that such authority should therefore be revoked. Global Capacity explained that it had taken longer to commence operations than originally planned. The Public Service Commission decided not to revoke Global Capacity's authority and the matter is closed. See West Virginia PUC Case No. 110259-T-CN.

(A-12) Indicate if the Applicant or any of its officers, directors, partners, or managers has been or are currently involved in any civil or criminal investigation, or had judgments entered in any civil matter, judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years.

Describe in detail any such judgments or convictions. Please make sure you provide the following information:

1. States involved in the judgments and/or convictions.
2. Reasons for the investigation and/or judgment.
3. Copy of the Court order, if applicable.

Neither Applicant nor any of its officers, directors, partners, or managers has been or are currently involved in any civil or criminal investigation, or had judgments entered in any civil matter, judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years.

(A-13) Indicate if the Applicant's customers will be able to access alternative toll service providers or resellers via 1+101XXXX access.

☐ Yes

☒ No, applicant intends to provide only non-voice services.

(A-14) Is Applicant willing to post a Performance Bond? Please check appropriate box(s).

☐ For Long Distance Resellers, a \$10,000 bond will be recommended for those resellers who collect advances, prepayments or deposits.

☒ Yes

☐ No

If "No", continue to question (A-15).

☐ For Local Exchange Resellers, a \$25,000 bond will be recommended.

☒ Yes

☐ No

If "No", continue to question (A-15).

☐ For Facilities-Based Providers of Long Distance, a \$100,000 bond will be recommended.

☒ Yes

☐ No

If "No", continue to question (A-15).

☐

May 24, 2010

For Facilities-Based Providers of Local Exchange, a \$100,000 bond will be recommended.

☒ Yes

☐ No

If any box in (A-14) is marked "No", continue to question (A-15).

Global capacity understands that the Commission no longer requires the posting of a performance bond except in extraordinary circumstances (which Global Capacity does not believe are present here). However, to the extent the Commission believes that a bond is necessary, Global Capacity will post the bond.

Note: Amounts are cumulative if the Applicant is applying for more than one type of service.

(A-15) If any box in (A-14) is marked "No", provide the following information. Clarify and explain the Applicant's deposit policy (reference by tariff page number). Provide a detailed explanation of why the Applicant's superior financial position limits any risk to Arizona consumers.

Global Capacity does not require deposits for retail customers. Global Capacity may require advance payment of monthly charges associated with its services.

(A-16) Submit copies of affidavits of publication that the Applicant has, as required, published legal notice of the Application in all counties where the Applicant is requesting authority to provide service.

Note: For Resellers, the Applicant must complete and submit an Affidavit of Publication Form as Attachment "C" before Staff prepares and issues its report. Refer to the Commission's website for Legal Notice Material (Newspaper Information, Sample Legal Notice and Affidavit of Publication). For Facilities-Based Service Providers, the Hearing Division will advise the Applicant of the date of the hearing and the publication of legal notice. Do not publish legal notice or file affidavits of publication until you are advised to do so by the Hearing Division.

Global Capacity will publish the form of bond required by the Hearing Division in this docket and will submit copies of the affidavits of publication for its legal notice, as directed by the Commission after filing of this Application.

(A-17) Indicate if the Applicant is a switchless reseller of the type of telecommunications services that the Applicant will or intends to resell in Arizona:

☒ Yes

☐ No

If "Yes", provide the name of the company or companies whose telecommunications services the Applicant resells.

Global Capacity intends to resell the facilities and equipment of Incumbent Local Exchange Carriers ("ILECs") operating in Arizona.

(A-18) List the States in which the Applicant has had an application approved or denied to offer telecommunications services similar to those that the Applicant will or intends to offer in Arizona:

Global Capacity is extremely well qualified to provide telecommunications services in Arizona. Global Capacity currently holds authority or is registered to provide some form of telecommunications services in the following jurisdictions: Alabama, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida (interexchange on a deregulated basis), Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana,

Louisiana, Maine, New Hampshire, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, West Virginia and Wisconsin.

Global Capacity is in the process of filing applications for authority (or expanded authority) or registering to provide telecommunications services in Colorado, Florida, Georgia, Idaho, Nebraska, New Jersey, Tennessee, Washington, and Wyoming, and is planning to request expanded authority in several of the states listed above

Note: If the Applicant is currently approved to provide telecommunications services that the Applicant intends to provide in Arizona in less than six states, excluding Arizona, list the Public Utility Commission ("PUC") of each state that granted the authorization. For each PUC listed provide the name of the contact person, their phone number, mailing address including zip code, and e-mail address.

(A-19) List the States in which the Applicant currently offers telecommunications services similar to those that the Applicant will or intends to offer in Arizona.

Global Capacity is currently offering services similar to those it currently offers or intends to offer in Arizona (i.e. non-voice data services) in the states listed in A-18 above.

Note: If the Applicant currently provides telecommunication services that the Applicant intends to provide in Arizona in six or more states, excluding Arizona, list the states. If the Applicant does not currently provide telecommunications services that the Applicant intends to provide in Arizona in five or less states, list the key personnel employed by the Applicant. Indicate each employee's name, title, position, description of their work experience, and years of service in the telecommunications services industry.

Descriptions of the key personnel of Global Capacity are attached hereto as Attachment E. Global Capacity's highly-qualified staff will ensure that its operations will meet high standards for service quality and reliability.

(A-20) List the names and addresses of any alternative providers of the service that are also affiliates of the telecommunications company, as defined in R14-2-801.

Not Applicable. Applicant does not have affiliates who are alternative providers of the service, as defined in R14-2-801.

(A-21) Check here if you wish to adopt as your petition a statement that the service has already been classified as competitive by Commission Decision:

- ☒ Decision # 64178 Resold Long Distance
- ☒ Decision # 64178 Resold LEC
- ☒ Decision # 64178 Facilities Based Long Distance
- ☒ Decision # 64178 Facilities Based LEC

## B. FINANCIAL INFORMATION

(B-1) Indicate if the Applicant has financial statements for the two (2) most recent years.

☒ Yes

☐

No

If "No," explain why and give the date on which the Applicant began operations.

**Global Capacity is not a publicly traded company and will provide the financial statements to the Commission upon execution of a protective agreement. Global Capacity agrees that the total assets, shareholder equity and net income in those reports may be made public in the Staff Report for this docket.**

(B-2) Include "Attachment D".

Provide the Applicant's financial information for the two (2) most recent years.

1. A copy of the Applicant's balance sheet.
2. A copy of the Applicant's income statement.
3. A copy of the Applicant's audit report.
4. A copy of the Applicant's retained earnings balance.
5. A copy of all related notes to the financial statements and information.

Note: Make sure "most recent years" includes current calendar year or current year reporting period.

**Please refer to response to Question B-1 above.**

(B-3) Indicate if the Applicant will rely on the financial resources of its Parent Company, if applicable.

**Applicant does not intend to rely on the financial resources of its sole member.**

(B-4) The Applicant must provide the following information.

1. Provide the projected total revenue expected to be generated by the provision of telecommunications services to Arizona customers for the first twelve months following certification, adjusted to reflect the maximum rates for which the Applicant requested approval. Adjusted revenues may be calculated as the number of units sold times the maximum charge per

unit.

**Applicant projects total revenues of approximately \$0 to \$10,000 for the first twelve months of providing jurisdictional telecommunications services to Arizona customers following certification.**

1. Provide the operating expenses expected to be incurred during the first twelve months of providing telecommunications services to Arizona customers following certification.

**Applicant projects operating expenses of approximately \$0 to \$10,000 during the first twelve months of providing jurisdictional telecommunications services to Arizona customers following certification.**

2. Provide the net book value (original cost less accumulated depreciation) of all Arizona jurisdictional assets expected to be used in the provision of telecommunications service to Arizona customers at the end of the first twelve months of operation. Assets are not limited to plant and equipment. Items such as office equipment and office supplies should be included in this list.

**At the end of the first twelve months of operation, Global Capacity's net book value of all Arizona assets that could be used in the provision of ACC-jurisdictional telecommunications service to Arizona customers will be \$5-7 million.**

3. If the projected value of all assets is zero, please specifically state this in your response.
4. If the projected fair value of the assets is different than the projected net book value, also provide the corresponding projected fair value amounts.

**The current fair value of assets used to provide ACC-jurisdictional service could range from \$0 to \$5-7 million.**

#### **C. RESOLD AND/OR FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES**

(C-1) Indicate if the Applicant has a resale agreement in operation,

☐

Yes

☒

No

If "Yes", please reference the resale agreement by Commission Docket Number or Commission Decision Number.

**As part of the transaction with MegaPath, the MegaPath interconnection agreement with the ILEC will be transferred to Global Capacity, thereby enabling Global Capacity to continue to provide services to the transferred customers and potential new customers. Given this transfer, Global Capacity is seeking the same authority in Arizona as currently held by MegaPath to ensure that the transfer of the customers and ILEC interconnection arrangements will occur without issue.**

#### **D. FACILITIES-BASED LONG DISTANCE AND/OR FACILITIES BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES**

(D-1) Indicate if the Applicant is currently selling facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services in Arizona. This item applies to an Applicant requesting a geographic expansion of their CC&N:

☐

Yes

☒

No

If "Yes," provide the following information:

1. The date or approximate date that the Applicant began selling facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services in Arizona.
2. Identify the types of facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services that the Applicant sells in Arizona.

If "No," indicate the date when the Applicant will begin to sell facilities-based long distance telecommunications AND/OR facilities-based local exchange telecommunications services in Arizona.

**Global Capacity intends to provide the same jurisdictional services currently being provided by MegaPath in Arizona upon the close of the asset purchase transaction with MegaPath, which is anticipated to be on January 1, 2015.**

#### **E. FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES**

(E-1) Indicate whether the Applicant will abide by the quality of service standards that were approved by the Commission in Commission Decision Number 59421:

☒

Yes

☐

No

(E-2) Indicate whether the Applicant will provide all customers with 911 and E911 service, where available, and will coordinate with incumbent local exchange carriers ("ILECs") and emergency service providers to provide this service:

☐

Yes

☒

No, applicant provides non-voice services only.

(E-3) Indicate that the Applicant's switch is "fully equal access capable" (i.e., would provide equal access to facilities-based long distance companies) pursuant to A.A.C. R14-2-1111 (A):

☒

Yes


☐

No

I certify that if the applicant is an Arizona corporation, a current copy of the Articles of Incorporation is on file with the Arizona Corporation Commission and the applicant holds a Certificate of Good Standing from the Commission. If the company is a foreign corporation or partnership, I certify that the company has authority to transact business in Arizona. I certify that all appropriate city, county, and/or State agency approvals have been obtained. Upon signing of this application, I attest that I have read the Commission's rules and regulations relating to the regulations of telecommunications services (A.A.C. Title 14, Chapter 2, Article 11) and that the company will abide by Arizona state law including the Arizona Corporation Commission Rules. I agree that the Commission's rules apply in the event there is a conflict between those rules and the company's tariff, unless otherwise ordered by the Commission. I certify that to the best of my



knowledge the information provided in this Application and Petition is true and correct.

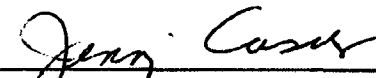
  
\_\_\_\_\_  
(Signature of Authorized Representative)

October 15, 2014  
(Date)

Richard Garner  
(Print Name of Authorized Representative)

Secretary and Treasurer  
(Title)

SUBSCRIBED AND SWORN to before me this 15<sup>th</sup> day of October, 2014

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: May 15, 2018



**ATTACHMENT A**

1) A copy of Global Capacity's formation documents, Certificate of Authority to Transact Business as a foreign corporation in Arizona and a Certificate of Good Standing are included herein.

2 & 3) The officers are:

F. Francis Najafi, President<sup>1</sup>  
Richard Garner, Secretary and Treasurer

The sole member, Pivotal Global Capacity, LLC, is an Arizona entity.

---

<sup>1</sup> Mr. Najafi is the Founder and CEO of Pivotal Group, a leading investment company with an equity portfolio that includes Global Capacity.

# STATE OF ARIZONA



## Office of the CORPORATION COMMISSION

### CERTIFICATE OF GOOD STANDING

To all to whom these presents shall come, greeting:

I, Jodi A. Jerich, Executive Director of the Arizona Corporation Commission, do hereby certify that

**\*\*\*GC PIVOTAL, LLC\*\*\***

a foreign limited liability company organized under the laws of the jurisdiction of Delaware did obtain a Certificate of Registration in Arizona on the 11th day of February 2011.

I further certify that according to the records of the Arizona Corporation Commission, as of the date set forth hereunder, the said limited liability company has not had its Certificate of Registration revoked for failure to comply with the provisions of A.R.S. section 29-601 et seq., the Arizona Limited Liability Company Act; and that the said limited liability company has not filed a Certificate of Cancellation as of the date of this certificate.

This certificate relates only to the legal authority of the above named entity as of the date issued. This certificate is not to be construed as an endorsement, recommendation, or notice of approval of the entity's condition or business activities and practices.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission. Done at Phoenix, the Capital, this 24th Day of September, 2014, A. D.



  
Jodi A. Jerich, Executive Director

By: \_\_\_\_\_ 1126711

**ATTACHMENT B**

**Telecommunication Services Tariff**

**Global Capacity will provide service to the transferred MegaPath customers pursuant to the existing customer contracts, which is also contemplated under Section 12 (Individual Case Basis (ICB) Arrangements) of its existing Arizona tariff.**

*May 24, 2010*

**ATTACHMENT C**

**Global Capacity will use the form of notice required by the Hearing Division**

*May 24, 2010*

**ATTACHMENT D**

**Financial Statements**

**Global Capacity will provide the financial statements upon execution of a protective agreement.**

*May 24, 2010*

## **ATTACHMENT E**

### **Key Personnel Management Biographies**

#### **F. Francis Najafi - Founder and CEO**

F. Francis Najafi is founder and CEO of Pivotal Group, a leading investment company focused on private equity and real estate.

He founded the privately held firm 30 years ago, investing in landmark properties.

Pivotal Group's real estate investments have included major hotel properties including the Century Plaza Hotel in Los Angeles, Class A commercial office properties such as 650 California Street in San Francisco, and community development projects, including Promontory in Park City.

Drawn by the unrealized potential of well-managed middle-market companies with unique assets, Mr. Najafi entered the private equity market in 2002, and acquired Network Solutions, the world's largest domain-name registry, in 2003. His acquisition philosophy is to initiate and support management-led efforts to build long-term value through the adoption of disruptive innovation, developing new products, expanding markets served and the continued optimization of its cost structure.

Pivotal Group's private equity portfolio includes Global Capacity, the industry's first telecom logistics company globally serving system integrators, carriers and enterprise clients.

Mr. Najafi completed his Bachelor of Science degree in engineering at Arizona State University (ASU), followed by two Masters Degrees from Thunderbird – The School of Global Management, and the University of Southern California (USC). At USC, he began his entrepreneurial activities while a Ph.D. candidate in International Political Economy.

Over the past quarter century while heading Pivotal Group, Mr. Najafi devoted significant time and resources to causes in the public interest. His commitment to community service spans the world. Mr. Najafi is a board member of EastWest Institute, a global think-and-do tank that devises innovative solutions to pressing security concerns; is a member of Urban Land Institute and a governor of the ULI Foundation, which generates funding for research and public service activities that enhance communities. Additionally, he is active in the World President's Organization, a global organization focused on corporate responsibility and personal service and Chief Executive's Organization (CEO), which represents 2,000 global leaders who represent leading businesses around the world.

In Arizona, Mr. Najafi is a foundation board member of the Translational Genomics Research Institute, which employs innovative advancements from the Human Genome Project.

Mr. Najafi's wide-ranging philanthropic interests include the Arizona Science Center, PARSA Community Foundation, Public Affairs Alliance of Iranian Americans (PAAIA), Science Foundation Arizona and Teach for America.

### **Jack Lodge - President**

Jack Lodge is the President of Global Capacity, responsible for all aspects of strategy and execution of the company. He has over 23 years of experience in information technology and telecommunications. Mr. Lodge served as Global Capacity's COO since 2008, and has been a key driver in the development of the company's industry-leading One Marketplace platform. Under his leadership, the number of customers and suppliers participating in One Marketplace has grown steadily, while the company has achieved significant improvements in gross margin and EBITDA performance.

Mr. Lodge joined Global Capacity in 2006 via the acquisition of CentrePath, Inc., a privately-held network management and engineering company where he served as General Manager, with responsibility for all aspects of CentrePath's managed services business. Prior to joining CentrePath's predecessor company, GiantLoop, Mr. Lodge held several leadership positions in the IT organization at Nortel Networks, where his responsibilities included network architecture and strategy. Lodge joined Nortel via the 1998 acquisition of Bay Networks, where he held a number of IT management positions. At Bay Networks, Mr. Lodge led the IT infrastructure integration following the 1994 merger of Wellfleet Communications and Synoptics Communications that created Bay Networks. Prior to Wellfleet / Bay Networks, Mr. Lodge owned and operated a regional network services and maintenance business, distributing and supporting technology from multiple manufacturers. He began his career with AT&T in 1989 in a sales role.

Mr. Lodge holds a B.A. from the College of the Holy Cross, and an M.B.A. from Northeastern University. He played varsity lacrosse at Holy Cross, and remains active as a youth lacrosse coach. Mr. Lodge currently resides in the Boston area with his family.

### **Richard Garner - Secretary and Treasurer**

Mr. Garner has been an integral part of Pivotal Group's management team for over ten years and is responsible for overseeing the accounting and finance requirements of Pivotal and its portfolio ventures.

As a Certified Public Accountant, he has more than twenty years of accounting, finance and general business experience, including ten years as a consultant, auditor and business advisor with the national CPA firms of Ernst & Young and Kenneth Leventhal.

He enjoys community service, including serving as an active youth leader with the Boy Scouts of America to help shape the lives of America's youth.

Mr. Garner received a B.S. in accounting from Northern Arizona University.

### **Ben Edmond - Chief Revenue Officer**



Mr. Edmond is Chief Revenue Officer at Global Capacity, with responsibility for all aspects of Global Capacity's revenue generation, including sales and marketing. Mr. Edmond has more than 15 years of experience in the telecommunications industry, encompassing broad expertise in the areas of sales, marketing and managerial experiences. Mr. Edmond joined Global Capacity in 2012. Prior to joining Global Capacity, Mr. Edmond was President of Sales and Marketing at FiberLight, where he led a national carrier and enterprise sales team in 15 metro markets and conducted daily operations in customer and account development and service as well as implementation of product development and all marketing activities.

Prior to joining FiberLight, Mr. Edmond owned Telecom Inventory, a consulting firm focusing on services for large enterprises requiring better access and use of telecommunications information. Mr. Edmond's telecom experience includes eight years with Xspedius Communications (formerly ACSI), where he held several leadership positions.

Mr. Edmond holds a M.S. in International Business from St. Louis University and a B.S. in International Business & Finance from Northeastern University.

#### **Phil Doyle - Chief Information Officer**

Phil Doyle is Chief Information Officer of Global Capacity, responsible for the development and management of all proprietary Global Capacity systems and data, including One Marketplace. Mr. Doyle has over 15 years of experience in systems and data resource management, successfully leading development teams and facilitating innovative software solutions for the telecommunications industry. A co-founder of Magenta netLogic, he conceived and developed the core systems that are the foundation of One Marketplace.

Prior to co-founding Magenta netLogic, Mr. Doyle held several positions, including Managing Director, at LANalysis and netFusion Limited. He began his career with ICI in a network and systems engineering role.

Mr. Doyle is an engineering graduate of Manchester Metropolitan University in the UK. He resides in Manchester with his wife and two children, where he enjoys cycling, surfing and walking.

#### **Craig Magerkurth - Chief Knowledge Officer**

Craig Magerkurth is Chief Knowledge Officer of Global Capacity, responsible for all systems and data that power the business. He brings over 18 years of experience in developing, building and managing complex, technology-based solutions for multiple industries. Most recently, he served as Vice President of Technology Programs at the Rise Group, where he had oversight of network and video surveillance programs such as Operation Virtual Shield, a Homeland Defense initiative in Chicago.

Previously, Mr. Magerkurth served as Chief Information Officer at Universal Access, where he managed the initial build-out of the Universal Transport Exchanges (UTX), and was instrumental in the development and deployment of the Universal Information Exchange (UIX) and Universal Solutions Exchange (USX). Through merger, these solutions ultimately became key components of

what today is Global Capacity's One Marketplace. Mr. Magerkurth has previously served in executive roles for American Traffic Solutions and Mobility Technologies, in addition to serving as Chief Information Officer for 20-20 Technologies. He began his career in the United States Army Corp of Engineers.

Mr. Magerkurth is a graduate of the United States Military Academy at West Point, where he served as President of his class. He holds a Masters of Science in Engineering Management from the University of Missouri at Rolla. Mr. Magerkurth currently resides in the Austin, TX area with his family.

#### **John Nannenhorn - Senior Vice President of Finance**

As Senior Vice President of Finance for Global Capacity, John Nannenhorn is responsible for directing all aspects of Global Capacity's Finance, Accounting, Internal Control, Treasury, Human Resources, Legal and Administrative affairs. He brings over 20 years of comprehensive, in-depth, multi-industry experience.

Most recently, Mr. Nannenhorn served as Vice President/Controller at AirCell, where he played an integral role in building the company's Finance Department from the ground-up. He was instrumental in defining and deploying core accounting processes as well as hiring, developing and mentoring a top-performing financial team. Previously, Mr. Nannenhorn served as Executive Director of Finance at ConferencePlus and held several executive roles within prominent corporations including LANSA, Baan, SAP, Memorex Telex and Ryobi. As Chief Financial Officer at LANSA, he was instrumental in implementing new accounting and reporting systems as well as crafting and deploying mission-critical pricing and business model policies. Mr. Nannenhorn began his career as a Senior Accountant with Friedman, Eisenstein, Raemer & Schwartz, LLP.

Mr. Nannenhorn holds a Masters of Business Administration in Finance and Bachelor of Science in Accountancy from Northern Illinois University's College of Business in DeKalb, Illinois. He currently resides in the greater Chicago area.

#### **Jeremy Kissel - General Counsel**

Jeremy Kissel is General Counsel at Global Capacity, responsible for all legal and compliance functions of the company. Prior to joining Global Capacity in 2012, Mr. Kissel worked for a boutique communications law firm in Washington, D.C. and Chicago, assisting companies with regulatory compliance, commercial transactions, and representing clients before federal government agencies and the United States Congress. While serving as both an Attorney-Advisor in the Policy Division of the Federal Communications Commission's Media Bureau and Acting Legal Advisor to the Chief of the Media Bureau, Mr. Kissel was involved in all aspects of regulatory proceedings at the agency.

Prior to joining the Federal Communications Commission, Mr. Kissel worked in a United States Senate Leadership Office in Washington, D.C. From 2003 to 2006, Mr. Kissel was a litigator in Miami, Florida, where he concentrated his practice on insurance defense, insurance coverage, and bad faith matters.

Mr. Kissel holds a Bachelor of Science (B.S.) from Florida State University, a Juris Doctor (J.D.) from Nova Southeastern University, Shepard Broad Law Center, and a Master of Laws (LL.M) from American University's Washington College of Law. Mr. Kissel resides in Chicago with his wife.

[REDACTED]  
ROSHKA DEWULF & PATTEN, PLC  
ATTORNEYS AT LAW  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET  
SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

RECEIVED

2014 OCT 28 A 11:32

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

ORIGINAL

October 28, 2014

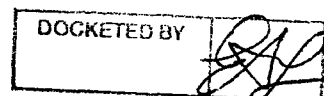
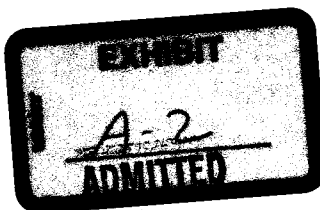
Arizona Corporation Commission  
DOCKETED

OCT 28 2014

Emailed and Mailed

Docket Control

Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007



RE: GC Pivotal, LLC's Responses to Staff's First Set of Data Requests  
Docket No. T-20787A-14-0367

Docket Control:

Enclosed are GC Pivotal's responses to Staff's First Set of Data Requests in the above docket.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Patten".

Michael W. Patten

MWP:jh

Enclosure – Original and 13 Copies

cc: Matt Connolly

**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.1** Will GC Pivotal be charging its facilities-based and resold private line customers the same currently tariffed Arizona rates?

**RESPONSE:** Yes.

**RESPONDENT:** Jeremy Kissel, General Counsel

**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.2**

If the answer to STF 1.1 is no, please provide a tariff of proposed rates, terms and conditions for facilities-based private line customers.

**RESPONSE:**       **Not applicable.**

**RESPONDENT:**

**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.3**

Please confirm GC Pivotal will not be providing local exchange or interexchange services to residential customers.

**RESPONSE:**

**GC Pivotal confirms that, at this time, it will not provide local exchange or interexchange service to residential customers. However, in the event that GC Pivotal determines that it will provide such services, GC Pivotal will notify the Commission and ensure timely compliance of all applicable laws and rules.**

**RESPONDENT:**

**Jeremy Kissel, General Counsel**

**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.4**                      Please confirm GC Pivotal will not be providing voice local exchange or interexchange services to business customers.

**RESPONSE:**                GC Pivotal confirms that at this time, it will not be providing voice local exchange or interexchange services to business customers. See response to STF 1.3.

**RESPONDENT:**            Jeremy Kissel, General Counsel



**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.5**

Please provide the proposed tariff detailing the rates, terms and conditions GC Pivotal will be using for new customers.

**RESPONSE:**

With respect to the former MegaPath customers, we will continue to serve those customers pursuant to the MegaPath contractual arrangements.

Second, with respect to new non-MegaPath customers, GC only intends to provide service under its private line tariff at this point.

**RESPONDENT:**

**Jeremy Kissel, General Counsel**

**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.6** Will GC Pivotal have any employees located in Arizona? If yes, please specify how many. If not, why not?

**RESPONSE:** Yes, four employees.

**RESPONDENT:** Jeremy Kissel, General Counsel

**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.7** Please provide the location of the company's customer service center, the hours of availability for the customer support provided by GC Pivotal and the toll free customer support number for its customers.

**RESPONSE:** GC Pivotal utilizes two Network Operation Centers to provide customer service. The Network Operation Centers are located in Chicago, Illinois and Waltham, Massachusetts. The toll free number is 1 (866) 469-5667. The Network Operations Centers can also be reached at [CNO@globalcapacity.com](mailto:CNO@globalcapacity.com).

**RESPONDENT:** Jeremy Kissel, General Counsel

**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.8** Please describe how the company will handle customer complaints.

**RESPONSE:** Complaints will be handled through GC Pivotal's customer service center, which can be reached at (312) 660-1241 or [customercare@globalcapacity.com](mailto:customercare@globalcapacity.com). Should a complaint be referred to GC Pivotal by the Arizona Corporation Commission, it will be handled by Jeremy Kissel or John Nannenhorn, who can be reached at (312) 673-2400 or [regulatory@globalcapacity.com](mailto:regulatory@globalcapacity.com).

**RESPONDENT:** Jeremy Kissel, General Counsel

**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.9**

Please describe how the company will handle customer requests for maintenance and repair.

**RESPONSE:**

**GC Pivotal utilizes two Network Operation Centers to provide customer service. The Network Operation Centers are located in Chicago, Illinois and Waltham, Massachusetts. The toll free number is 1 (866) 469-5667. The Network Operations Centers can also be reached at CNO@globalcapacity.com.**

**RESPONDENT: Jeremy Kissel, General Counsel**

**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.10**

Please list the states in which GC Pivotal has had an application denied to offer telecommunications services similar to those that GC Pivotal will or intends to offer in Arizona. If there are any states where this occurred, please explain the reason for the denial, per state.

**RESPONSE:**       **There are no such states.**

**RESPONDENT:**   **Jeremy Kissel, General Counsel**

**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.11**

An examination of filings in Public Service Commission of West Virginia Case No. 11-0259-T-CN did not reveal any supporting documentation for the commencement of operations issue mentioned in GC Pivotal's response to Application question (A-11). Please provide such documentation that indicates the nature of the issue and its conclusion.

**RESPONSE:**       **See Attachment STF 1.11.**

**RESPONDENT:**   **Jeremy Kissel, General Counsel**

## **Attachment-STF 1.11**



03:01 PM MAY 16 2013 PSC EXEC SEC DIV

May 15, 2013  
Via FedEx, Tracking #7997-7337-4076

Public Service Commission of West Virginia  
Attention: Sandra Squire, Director, Executive Secretary Division  
201 Brooks Street  
Charleston, WV 25323  
304-340-0300

Re: May 9, 2013 Letter to GC Pivotal, LLC  
Case No. 13-0445-T-P

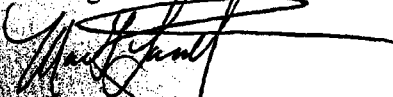
Dear Sandra,

The purpose of this letter is to respond to your letter based on the Commission order. GC Pivotal, LLC has commenced operations starting in the January 2013 pursuant to authority granted in Case No. 11-0259-T-CN. GC Pivotal, LLC had \$25,240 of West Virginia intrastate end user (aka retail revenue) revenue in the 1Q2013 and plans to serve many more customers in West Virginia in 2013.

We respectfully request that Public Service Commission of West Virginia accept this letter knowing that GC Pivotal, LLC has started operations in January 2013 and allow GC Pivotal, LLC certificate with the Commission to remain active. GC Pivotal, LLC prays that the Commission cease from any punitive action or investigation as it merely took longer to commence operations than what was originally planned.

Please do not hesitate to contact me if you have any questions or concerns at [mark@csilongwood.com](mailto:mark@csilongwood.com) or at my office at the phone number and address on my letterhead.

Best regards



Mark Lammert CPA  
Tax Preparer for GC Pivotal LLC  
President of Compliance Solutions, Inc.

*Public Service Commission  
Of West Virginia*

201 Brooks Street, P. O. Box 812  
Charleston, WV 25323



Phone: (304) 340-0300  
FAX: (304) 340-0325

May 9, 2013

Mark Lammert, Tax Preparer  
GC Pivotal, LLC  
c/o Compliance Solutions, Inc.  
740 Florida Central Pkwy, Ste. 2028  
Longwood, FL 32750

RE: Case No. 13-0445-T-P  
GC Pivotal, LLC

Dear Mr. Lammert:

Enclosed is a copy of a Commission order issued today in the above-styled proceeding.

If you have provided an email address you will automatically receive notifications as documents are filed in this proceeding. The email notifications allow recipients to view a document within an hour from the time the filing is processed. If you have not provided your email address, please send an email to [caseinfo@psc.state.wv.us](mailto:caseinfo@psc.state.wv.us) and state the case number in the email subject field. **You are encouraged to file an Electronic Mail Agreement which allows the commission to serve all orders issued in this matter via electronic notification.**

**General reminder** - if you submit any additional documents - in addition to filing an original and twelve copies of all documents with the Commission, you are required to **mail** a copy to all other parties of record. Please note - the Public Service Commission does not accept electronic filings.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandra Squire".

Sandra Squire, Director  
Executive Secretary Division

SS/jn  
Enclosure: Order

On April 23, 2013, Staff filed its Final Joint Staff Memorandum. Staff stated that GCP failed to begin West Virginia operations within one year as required by the July 13, 2011 Commission Order in Commission Case No. 11-0259-T-CN. That order granted a request by GCP for a certificate of convenience and necessity to provide interexchange (IXC) and competitive services. Staff also stated that GCP also failed to file a tariff within ten days of the July 13, 2011 order as required, and that GCP did not file its tariff until April 17, 2013 with a requested effective date of April 18, 2013. Staff asserted that the GCP certificate is null and void for failure to comply with the July 13, 2011 Order. If the Commission determines that the certificate is not null and void, the Commission should deny the Motion for Confidential Treatment, because the financial information in the Annual Report is not subject to confidential treatment.

### DISCUSSION

In Case No. 09-0819-T-CN, the Commission granted a certificate of convenience and necessity to Public Communications Services, Inc. (PCS) to provide resold interexchange services in the State of West Virginia. The Commission directed PCS to Commence operations within the State of West Virginia within one year and that otherwise the granted authority "shall be deemed null and void." Public Communications Services, Inc., Case No. 09-0819-T-CN (Recommended Decision July 21, 2009, Final August 10, 2009).

One year and two days after the above-described order issued in Case No. 09-0819-T-CN, PCS filed a proceeding to transfer control of PCS to another carrier. In an order issued on October 14, 2010, the Commission noted the "unambiguous terms" of the prior order requiring that if PCS did not timely commence operations in West Virginia it would not have any authority to transfer. Under the particular circumstances, the Commission granted one additional year for PCS to commence operations.

On October 31, 2011, PCS filed (in a separate docket) seeking permission to transfer indirect control of PCS. Staff determined, and PCS did not refute, that PCS had not commenced service in West Virginia within the one-year extension granted by the Commission. The Commission stated its intention to revoke the authority granted to PCS unless PCS submitted evidence that it had begun operations in West Virginia. Case No. 09-0819-T-CN, (Commission Order December 1, 2011).

PCS filed a motion to voluntarily cancel its certificate of convenience and necessity, noting that PCS had no customers in West Virginia. The Commission granted the motion to cancel the certificate because PCS did not timely commence operations under its certificate. Case No. 09-0819-T-CN (January 25, 2012)

In the PCS case, PCS initially filed regarding its certificate very shortly after the initial one year period had passed. In the present case, GCP received its certificate in

On April 23, 2013, Staff filed its Final Joint Staff Memorandum. Staff stated that GCP failed to begin West Virginia operations within one year as required by the July 13, 2011 Commission Order in Commission Case No. 11-0259-T-CN. That order granted a request by GCP for a certificate of convenience and necessity to provide interexchange (IXC) and competitive services. Staff also stated that GCP also failed to file a tariff within ten days of the July 13, 2011 order as required, and that GCP did not file its tariff until April 17, 2013 with a requested effective date of April 18, 2013. Staff asserted that the GCP certificate is null and void for failure to comply with the July 13, 2011 Order. If the Commission determines that the certificate is not null and void, the Commission should deny the Motion for Confidential Treatment, because the financial information in the Annual Report is not subject to confidential treatment.

### DISCUSSION

In Case No. 09-0819-T-CN, the Commission granted a certificate of convenience and necessity to Public Communications Services, Inc. (PCS) to provide resold interexchange services in the State of West Virginia. The Commission directed PCS to Commence operations within the State of West Virginia within one year and that otherwise the granted authority "shall be deemed null and void." Public Communications Services, Inc., Case No. 09-0819-T-CN (Recommended Decision July 21, 2009, Final August 10, 2009).

One year and two days after the above-described order issued in Case No. 09-0819-T-CN, PCS filed a proceeding to transfer control of PCS to another carrier. In an order issued on October 14, 2010, the Commission noted the "unambiguous terms" of the prior order requiring that if PCS did not timely commence operations in West Virginia it would not have any authority to transfer. Under the particular circumstances, the Commission granted one additional year for PCS to commence operations.

On October 31, 2011, PCS filed (in a separate docket) seeking permission to transfer indirect control of PCS. Staff determined, and PCS did not refute, that PCS had not commenced service in West Virginia within the one-year extension granted by the Commission. The Commission stated its intention to revoke the authority granted to PCS unless PCS submitted evidence that it had begun operations in West Virginia. Case No. 09-0819-T-CN, (Commission Order December 1, 2011).

PCS filed a motion to voluntarily cancel its certificate of convenience and necessity, noting that PCS had no customers in West Virginia. The Commission granted the motion to cancel the certificate because PCS did not timely commence operations under its certificate. Case No. 09-0819-T-CN (January 25, 2012)

In the PCS case, PCS initially filed regarding its certificate very shortly after the initial one year period had passed. In the present case, GCP received its certificate in

July 2011 and, a year and a half later, has yet to commence operations in West Virginia. The Commission gives notice that it is inclined to revoke the authority granted to GCP unless GCP submits evidence within ten days to establish that operations have commenced in West Virginia.

### **FINDING OF FACT**

GCP received a certificate of convenience and necessity on July 13, 2011 (Case No. 11-0259-T-CN), with the understanding that failure to commence operations within the State of West Virginia within one year would result in the authority being deemed null and void.

### **CONCLUSION OF LAW**

GCP should file information reflecting any operations conducted in West Virginia pursuant to the authority granted in Case No. 11-0259-T-CN.

### **ORDER**

IT IS THEREFORE ORDERED that within ten days of the date of this Order GC Pivotal, LLC shall file information reflecting any operations conducted in West Virginia pursuant to the authority granted in Case No. 11-0259-T-CN.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Staff by hand delivery.

A True Copy, Testes:

  
Sandra Squire  
Executive Secretary

JJW/s  
130445c.doc

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 11<sup>th</sup> day of June 2013.

CASE NO. 13-0445-T-P

GC PIVOTAL, LLC,

Petition requesting confidential treatment of  
information contained in 2012 Annual Report.

**COMMISSION ORDER**

The Commission refers this matter for further proceedings.

**BACKGROUND**

Case No. 11-0259-T-CN

On June 28, 2011, the presiding Administrative Law Judge (ALJ) issued a Recommended Decision (Final July 13, 2011) granting GC Pivotal, LLC (GCP) a certificate of public convenience and necessity to provide intrastate telecommunication resale services throughout the State of West Virginia by offering resold data circuits by utilizing the facilities of incumbent local exchange carriers and other facilities-based carriers. The order specified: "GC Pivotal, LLC, is required to commence operations within the State of West Virginia within one (1) year from the date this decision becomes final, otherwise the authority hereby granted shall be deemed null and void." The order also required GCP to file a proper tariff on or before July 23, 2011.

**Present Case**

On March 28, 2013, GCP filed its 2012 Annual Report. GCP filed its 2012 financial statements under seal.

On April 19, 2013, Commission Staff filed its Initial Joint Staff Memorandum. Staff stated that GCP had provided no justification for filing its financial records under seal. Staff learned from GCP that GCP had no West Virginia operations in 2012. Staff stated that it advised GCP to submit a completed version of its Annual Report as soon as possible.

On April 23, 2013, Staff filed its Final Joint Staff Memorandum. Staff stated that GCP failed to begin West Virginia operations within one year as required by the July 13, 2011 Commission Order in Commission Case No. 11-0259-T-CN. That order granted a request by GCP for a certificate of convenience and necessity to provide interexchange (IXC) and competitive services. Staff also stated that GCP also failed to file a tariff within ten days of the July 13, 2011 order as required, and that GCP did not file its tariff until April 17, 2013 with a requested effective date of April 18, 2013. Staff asserted that the GCP certificate is null and void for failure to comply with the July 13, 2011 Order. If the Commission determines that the certificate is not null and void, the Commission should deny the Motion for Confidential Treatment, because the financial information in the Annual Report is not subject to confidential treatment.

On May 9, 2013, the Commission issued an order noting that GCP received its certificate in July 2011 and had apparently failed to commence operations in West Virginia. The Commission stated that it was inclined to revoke the authority granted to GCP unless GCP submitted information within ten days to establish that operations had commenced in West Virginia.

On May 16, 2013, GCP filed a letter stating that it had commenced operations in West Virginia beginning in January 2013. GCP stated that it had taken longer to commence its West Virginia operations than originally planned. GCP requested that the Commission allow the GCP certificate to remain active.

### **DISCUSSION**

Based on the information supplied by GCP regarding its West Virginia operations, the Commission will not revoke the GCP certificate. The Commission will refer the question of confidential treatment in the 2012 Annual Report to the ALJ Division for further proceedings.

The Commission reminds GCP that Rules 4.1.d and 12.7 of the Commission Rules of Practice and Procedure, 150 C.S.R. 1, requires that limited liability corporations be represented by legal counsel admitted to practice before the courts of this State for all except preliminary filings with the Commission.

### **FINDING OF FACT**

GCP asserted service in West Virginia beginning in January 2013.

### CONCLUSION OF LAW

Under the circumstances of this case the Commission will not revoke the GCP certificate and will refer the question of confidential treatment to the ALJ Division for further proceedings.

### ORDER

IT IS ORDERED that this proceeding be referred to the Division of Administrative Law Judges for a decision to be rendered on or before Monday, December 9, 2013

IT IS FURTHER ORDERED that if the participants desire an extension of the foregoing decision due date, they may seek an extension only on formal application to the Commission.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this order by electronic service on all parties of record who have filed an e-service agreement, by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Staff by hand delivery.

A True Copy, Testes:

  
Sandra Squire  
Executive Secretary

JJW/s  
130445ca.doc



**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.12**

Please provide a diagram clearly showing the relationship between FFN Investments, LLC, Pivotal Global Capacity, LLC, Pivotal Group and GC Pivotal d/b/a Global Capacity.

**RESPONSE:**

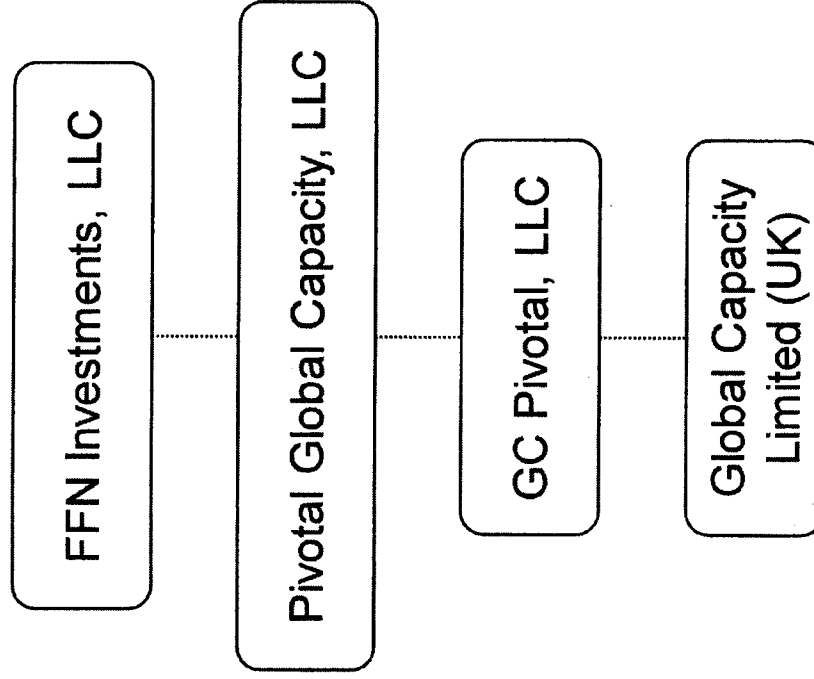
**See Attachment STF 1.12.**

**RESPONDENT:**

**Jeremy Kissel, General Counsel**

## **Attachment-STF 1.12**

**Organizational Structure**  
GC Pivotal, LLC d/b/a Global Capacity



**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.13**

The officers listed in the response to (A-8) 2. appear to be officers of Pivotal Group and not of the Applicant. Please confirm this assumption is correct and provide the list of officers of GC Pivotal. Please also indicate if the officers listed in the response to (A-8) 2. are owners of GC Pivotal and if so, their percentages of ownership.

**RESPONSE:**

**Francis Najafi and Richard Garner are officers of GC Pivotal, LLC. The GC Pivotal, LLC management team identified in the response handle the day-to-day operations of GC Pivotal, LLC. GC Pivotal, LLC is wholly owned by Pivotal Global Capacity, LLC.**

**RESPONDENT:**

**Jeremy Kissel, General Counsel**

**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.14** Please provide a complete description of the Facilities-Based Private Line services GC Pivotal intends to provide as requested in Application question (A-2).

**RESPONSE:** Private Line Service is a direct communications channel available at multiple speeds (DS-1, DS-3, Optical SONET (OC-N), and 1Mbps thru 1000Mbps circuits) between two designated locations on a point-to-point basis.

**RESPONDENT:** Jeremy Kissel, General Counsel

**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.15**

Please indicate what parts of its own facilities GC Pivotal will be using to provide facilities-based service and whether any of those facilities are or will be located in Arizona.

**RESPONSE:**

As part of the MegaPath/GC Pivotal transaction, GC Pivotal is purchasing MegaPath's network, composed of equipment in the company's collocation spaces (e.g., DSLAMs, routers, cable, and racks), applications used to provide service, equipment related to the company's points of presence and transport, wholesale and certain direct access customers and their respective contracts, and other associated assets. GC Pivotal will utilize this network, along with interconnecting with ILEC networks and other carriers' networks as needed to provide the services. MegaPath has network assets in Arizona which are largely located within ILEC Central Offices.

**RESPONDENT:**

Jeremy Kissel, General Counsel

**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.16**

Please provide an updated status, if any, of the pending applications and anticipated application filings for the states indicated in the response to Application question (A-18).

**RESPONSE:**

**GC Pivotal will provide updates. At this time, GC Pivotal has filed applications for authority (or expanded authority) in Colorado, Florida, Georgia, Idaho, Nebraska, New Jersey, Tennessee, Washington, and Wyoming.**

**RESPONDENT:**

**Jeremy Kissel, General Counsel**

**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.17**

What steps has GC Pivotal taken to protect the security of their equipment and network? If none exist, what protection does the company have planned?

**RESPONSE:**

Security of its equipment and network is critical to its ability to being successful in providing its competitive services. GC Pivotal equipment is in colocation-based facilities, and GC Pivotal adheres to the facilities' security guidelines and procedures.

**RESPONDENT:**

Jeremy Kissel, General Counsel



**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.18**                      Is the company aware that according to A.A.C. R14-2-1201(6)(d) a requirement of providing Local Exchange service in Arizona is that 911 service also be provided?

**RESPONSE:**                Yes. Should GC Pivotal offer voice local exchange service in Arizona, it will provide 911 service.

**RESPONDENT:**          Jeremy Kissel, General Counsel

**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.19**

In response to STF 1.18 and Application question (E-2), please specify how GC Pivotal intends to comply with A.A.C. R14-2-1201(6)(d).

**RESPONSE:**

GC Pivotal does not intend to provide "basic local exchange telephone service" in Arizona, which is the basic residential voice telephone service that qualifies for Arizona USF support. Therefore, that provision does not apply.

**RESPONDENT:**

Jeremy Kissel, General Counsel

**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.20**

As an applicant for Facilities-Based and Resold Long Distance Telecommunications authority, is the company aware of the equal access rule requirement A.A.C. R14-2-1111(A)?

**RESPONSE:**

**Yes.**

**RESPONDENT:**

**Jeremy Kissel, General Counsel**

**STAFF'S FIRST SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
OCTOBER 28, 2014**

**STF 1.21**                      In response to STF 1.20 and Application question (E-3), please specify how GC Pivotal intends to comply with A.A.C. R14-2-1111(A).

**RESPONSE:**                GC Pivotal does not intend to provide voice service in Arizona. Therefore, providing 2-PIC toll equal access does not apply to its service. However, should GC Pivotal begin offering voice local exchange service, it will offer 2-PIC toll equal access.

**RESPONDENT:**            Jeremy Kissel, General Counsel

[REDACTED]  
ROSHKA DeWULF & PATTEN, PLC  
ATTORNEYS AT LAW  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET  
SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

RECEIVED

2014 NOV -5 P 3:30

ORIGINAL

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

November 5, 2014

Arizona Corporation Commission

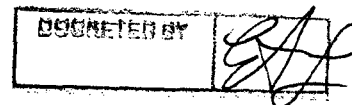
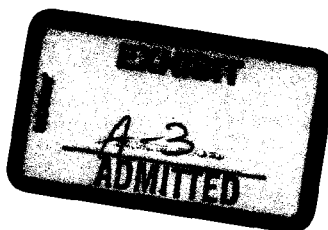
DOCKETED

NOV 05 2014

**Emailed and Mailed**

Docket Control

Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007



RE: GC Pivotal, LLC's Responses to Staff's Second Set of Data Requests  
Docket No. T-20787A-14-0367

Docket Control:

Enclosed are GC Pivotal's responses to Staff's Second Set of Data Requests in the above docket.

Please let me know if you have any questions.

Sincerely,

Michael W. Patten

MWP:jh

Enclosure - Original and 13 Copies

cc: Matt Connolly

**STAFF'S SECOND SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
NOVEMBER 5, 2014**

**STF 2.1** In regards to the consolidated financials submitted by GC Pivotal, what percentage of the financial data can be attributed to the subsidiary?

**RESPONSE:** Less than one percent (1%).

**RESPONDENT:** Jeremy Kissel, General Counsel

**STAFF'S SECOND SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
NOVEMBER 5, 2014**

**STF 2.2**                      In follow-up to the response to Staff's DR 1.6, what function(s) will the four employees be performing in Arizona?

**RESPONSE:**                The four employees will be providing field technician services.

**RESPONDENT:**            Jeremy Kissel, General Counsel

**STAFF'S SECOND SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
NOVEMBER 5, 2014**

**STF 2.3**

In follow-up to the response to Staff's DR 1.8, as the company is providing a toll free number for customer support, please explain why the company will not or cannot provide a toll free number for customers to call regarding complaints. Please also clarify the information in this response when compared against the contact information in GC Pivotal's Arizona Tariff No. 1, Page 9. If the tariff page needs updating, please provide a proposed updated Page 9.

**RESPONSE:**

Global Capacity will create a toll free number for customers to call regarding complaints.

**RESPONDENT:**

Jeremy Kissel, General Counsel



**STAFF'S SECOND SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
NOVEMBER 5, 2014**

**STF 2.4**                      In follow-up to the response to Staff's DR 1.12, please clarify for Staff where Pivotal Group fits into the diagram provided.

**RESPONSE:**                Please see the description set forth in the second paragraph of the October 16, 2014 FCC Public Notice (Attachment STF 2.4).

**RESPONDENT:**            Jeremy Kissel, General Counsel

## **Attachment-STF 2.4**



# PUBLIC NOTICE

**Federal Communications Commission**  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>  
TTY: 1-888-835-5322

DA 14-1496

Released: October 16, 2014

**DOMESTIC SECTION 214 APPLICATION FILED FOR  
THE ACQUISITION OF CERTAIN ASSETS OF MEGAPATH CORPORATION  
BY GC PIVOTAL, LLC D/B/A GLOBAL CAPACITY**

**STREAMLINED PLEADING CYCLE ESTABLISHED**

**WC Docket No. 14-173**

**Comments Due: October 30, 2014**

**Reply Comments Due: November 6, 2014**

On October 2, 2014, MegaPath Corporation (MegaPath) and GC Pivotal, LLC d/b/a Global Capacity (Global Capacity) (together, Applicants) filed an application pursuant to section 63.03 of the Commission's rules to transfer certain assets from MegaPath to Global Capacity.<sup>1</sup>

MegaPath, a Virginia corporation, offers competitive telecommunications services and other services to business customers in multiple states. Global Capacity, a Delaware limited liability company, provides competitive telecommunications services in multiple states. Applicants state that Pivotal Global Capacity, LLC, an Arizona limited liability company, does not provide telecommunications services and owns 100 percent of Global Capacity. Applicants further state that FFN Investments, LLC (FFN), an Arizona limited liability company, owns 100 percent of Pivotal Global Capacity, LLC. They state that the Najafi 2006 Irrevocable Trust owns 60 percent of FFN, and the F. Francis Najafi Family Trust owns 40 percent of Global Capacity as a 30 percent direct owner of FFN and a 10 percent indirect owner of FFN through Pivotal Capital Corporation. Pivotal Capital Corporation owns 10 percent of FFN and is wholly owned by the F. Francis Najafi Family Trust. Applicants state that all entities are U.S.-based and that no other individual or entity holds a 10 percent or greater direct or indirect ownership interest in Global Capacity.

Pursuant to the terms of the proposed transaction, Global Capacity will acquire assets from MegaPath, including customer accounts and equipment. Applicants state that MegaPath does not intend to transfer its certifications and other authority to provide telecommunications services to Global Capacity; nor will it undergo a transfer of control as a result of the proposed transaction. Applicants assert that the proposed transaction is entitled to presumptive streamlined treatment under section

<sup>1</sup> 47 C.F.R. § 63.03; see 47 U.S.C. § 214. Applicants are also filing applications for transfer of control associated with authorization for international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

63.03(b)(2)(i) of the Commission's rules and that a grant of the application will serve the public interest, convenience, and necessity.<sup>2</sup>

Domestic Section 214 Application Filed for the Acquisition of Certain Assets of  
MegaPath Corporation by GC Pivotal, LLC d/b/a Global Capacity, WC Docket No. 14-  
173 (filed Oct. 2, 2014).

#### **GENERAL INFORMATION**

The transfer of assets identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 CFR § 63.03(a), interested parties may file comments **on or before October 30, 2014**, and reply comments **on or before November 6, 2014**. Pursuant to section 63.52 of the Commission's rules, 47 C.F.R. § 63.52, commenters must serve a copy of comments on the Applicants no later than the above comment filing date. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.

Pursuant to section 63.03 of the Commission's rules, 47 CFR § 63.03, parties to this proceeding should file any documents in this proceeding using the Commission's Electronic Comment Filing System (ECFS): <http://fjallfoss.fcc.gov/ecfs2/>.

**In addition, e-mail one copy of each pleading to each of the following:**

- 1) Myrva Freeman, Competition Policy Division, Wireline Competition Bureau, [myrva.freeman@fcc.gov](mailto:myrva.freeman@fcc.gov);
- 2) David Krech, Policy Division, International Bureau, [david.krech@fcc.gov](mailto:david.krech@fcc.gov);
- 3) Jodie May, Competition Policy Division, Wireline Competition Bureau, [jodie.may@fcc.gov](mailto:jodie.may@fcc.gov);
- 4) Jim Bird, Office of General Counsel, [jim.bird@fcc.gov](mailto:jim.bird@fcc.gov).

**People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant

---

<sup>2</sup> 47 C.F.R. § 63.03(b)(2)(i).

page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b), 47 C.F.R. § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

For further information, please contact Myrva Freeman at (202) 418-1506 or Jodie May at 202-418-0913.

- FCC -

**STAFF'S SECOND SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
NOVEMBER 5, 2014**

**STF 2.5** For each of the jurisdictions provided in the response to (A-18) of the Application in which GC Pivotal currently holds authority or is registered, please indicate what "form" of telecommunications service (ex. competitive local exchange).

**RESPONSE:** See Attachment STF 2.5.

**RESPONDENT:** Jeremy Kissel, General Counsel

## **Attachment-STF 2.5**

**GC Pivotal, LLC**  
**Response to STF 2.5**

<b>Jurisdiction</b>	<b>Type of Authority Currently Authorized</b>	<b>Classification/Services Covered by Certification</b>
Alabama	Resold Private Line, Local Exchange	CLEC (Local, Private Line)
Arkansas	Resold Local and Interexchange	CLEC and IXC (Local, and Long Distance)
California	Resold Local Exchange and Interexchange	CLEC and IXC (Local and Long Distance)
Connecticut	Resold Inter and IntraExchange - Reseller of Data Circuits	IXC (Long Distance)
Delaware	Resold Local Exchange and Interexchange	CLEC and IXC (Local and Long Distance)
District of Columbia	Resold Local Exchange	CLEC (Local)



**GC Pivotal, LLC**  
**Response to STF 2.5**

Florida	N/A	IXC (Long Distance) Pursuant to deregulation
Georgia	Resold Local Exchange and Interexchange	CLEC and IXC (Local and Long Distance)
Hawaii	Resold Local Exchange and Interexchange	CLEC and IXC (Local, and Long Distance)
Idaho	N/A	Data Only Provider
Illinois	Resold Local Exchange and Interexchange	CLEC and IXC (Local and Long Distance)
Indiana	Resold and Facilities-Based Local Exchange, and Interexchange	CLEC and IXC (Local, Long Distance, Access)
Iowa	Resold Interexchange	IXC (Long Distance)
Kansas	Local Exchange, Interexchange, Exchange Access	CLEC and IXC (Local, Long Distance and Access)

**GC Pivotal, LLC**  
**Response to STF 2.5**

Kentucky	Local Exchange and Interexchange (May provide service via resale and facilities-based)	CLEC and IXC (Local, Long Distance)
Louisiana	Competitive Access Provider	CAP (Local and Access)
Maine	Resold Unswitched Dedicated Service, Local Exchange and Interexchange	Other (Data only)
Maryland	Resold Local Exchange and Interexchange	CLEC and IXC (Local, and Long Distance)
Massachusetts	Resold Local Exchange (Data Services)	CLEC (Local)
Michigan	Basic Local Exchange and Interexchange	CLEC and IXC (Local, and Long Distance)
Minnesota	Local Niche Services	CLEC (Local)
Mississippi	Resold and Facilities-Based Local and Interexchange	CLEC and IXC (Local, Long Distance and Access)
Missouri	Local Exchange (Dedicated Private Line) and Interexchange	CLEC and IXC (Local Private Line, Long Distance and Access)

**GC Pivotal, LLC**  
**Response to STF 2.5**

Montana	Resold Local Exchange and Interexchange	CLEC and IXC (Local, and Long Distance)
Nevada	Resold Data Circuits	UTC - Competitive Supplier (Data Only)
New Hampshire	Local Exchange and Toll Provider	CLEC (Local)
New Mexico	Local Exchange	CLEC (Local)
New York	Local Exchange and Interexchange	CLEC and IXC (Local, Long Distance and Access)
North Carolina	Interexchange  Local Exchange and Access	CLEC and IXC (Local, Long Distance and Access)
North Dakota	Registered as Data and Private Line	Other (Private Line, Data)
Ohio	Other	Other (Data Services)
Oklahoma	Resold and Facilities Based Local Exchange and Resold Interexchange	CLEC and IXC (Local, Long Distance and Access)

**GC Pivotal, LLC**  
**Response to STF 2.5**

Oregon	Resold Local Exchange and Interexchange	CLEC and IXC (Local, and Long Distance)
Pennsylvania	Competitive Access Service  Local Exchange and Interexchange*	CAP (Data only) CLEC and IXC (Local, Long Distance and Access)
Rhode Island	Local Exchange	CLEC (Local)
South Carolina	Resold Local Exchange and Interexchange	CLEC and IXC (Local, and Long Distance)
South Dakota	Resold Local Exchange and Resold Interexchange	CLEC and IXC (Local, and Long Distance)
Texas	Resold - Data Only Services	CLEC (Local)
Utah	Resold and Facilities Based Local Exchange	CLEC (Local and Access)
Vermont	Resold Local Exchange and Interexchange	CLEC and IXC (Local, Long Distance)
Virginia	Resold and Facilities-Based Local Exchange and Facilities-Based Interexchange	CLEC and IXC (Local, Long Distance)
West Virginia	Resold and Facilities-Based Local Exchange and Interexchange	CLEC and IXC (Local, Long Distance and Access)

**GC Pivotal, LLC**  
**Response to STF 2.5**

Wisconsin	Resold and Facilities-Based Local Exchange and Interexchange	ATU-Alternative Telecommunications Utility (Local, Long Distance, Access, Private Line)
Wyoming	Resold Interexchange	IXC (Long Distance)

**STAFF'S SECOND SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
NOVEMBER 5, 2014**

**STF 2.6**

For each of the jurisdictions provided in the response to (A-18) of the Application in which GC Pivotal is in the process of filing applications for authority (or expanded authority), please indicate the type of telecommunications service currently held and/or requested (ex. competitive local exchange).

**RESPONSE:** See Attachment STF 2.6.

**RESPONDENT:** Jeremy Kissel, General Counsel

## **Attachment-STF 2.6**

**GC Pivotal, LLC**  
**Response to STF 2.6**

<b>Jurisdiction</b>	<b>Type of Authority Sought</b>
Alabama	Local Exchange and Interexchange
Colorado	Local Exchange & Emerging Competitive Telecommunications Services
Florida	Local Exchange and Interexchange
Georgia	Local Exchange and Interexchange



**GC Pivotal, LLC**  
**Response to STF 2.6**

Idaho	Local Exchange and Interexchange
Nebraska	Local Exchange and Interexchange
New Jersey	Local Exchange and Interexchange
Tennessee	Local Exchange and Interexchange
Washington	Local Exchange and Interexchange
Wyoming	Local Exchange

**STAFF'S SECOND SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
NOVEMBER 5, 2014**

**STF 2.7**

How will GC Pivotal handle maintenance and repair for customers in Arizona? Will this included service and repair technicians located in Arizona?

**RESPONSE:**

If the maintenance and repair pertain to customer premise equipment (CPE) owned by Global Capacity, then it will be maintained or repaired using either Global Capacity employees or a subcontractor of Global Capacity.

**RESPONDENT:**

Jeremy Kissel, General Counsel

**STAFF'S SECOND SET OF DATA REQUESTS FOR  
GC PIVOTAL, LLC (GC PIVOTAL)  
DOCKET NO. T-20787A-14-0367  
NOVEMBER 5, 2014**

**STF 2.8**

How will GC Pivotal handle maintenance and repair for owned or leased network and facility assets in Arizona? Will this included service and repair technicians located in Arizona?

**RESPONSE:**

If the maintenance and repair pertain to customer premise equipment (CPE) owned by Global Capacity, then it will be maintained or repaired using either Global Capacity employees or a subcontractor of Global Capacity, which may include service and repair technicians located in Arizona. If the maintenance or repair pertains to leased network or facility assets, then Global Capacity will work with service or repair technicians for the owner or operator of such leased network or facilities.

**RESPONDENT:**

Jeremy Kissel, General Counsel

**MEMORANDUM**

TO: Docket Control

FROM: Steven M. Olea  
Director  
Utilities Division

DATE: December 2, 2014

RE: IN THE MATTER OF THE APPLICATION OF GC PIVOTAL, LLC FOR A  
CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE  
FACILITIES-BASED AND RESOLD LOCAL EXCHANGE AND  
INTEREXCHANGE TELECOMMUNICATIONS SERVICES AND  
FACILITIES-BASED PRIVATE LINE SERVICE IN ARIZONA (DOCKET  
NO. T-20787A-14-0367)

Attached is the Staff Report for the above Application requesting approval for a Certificate of Convenience and Necessity ("CC&N") to provide the following services:

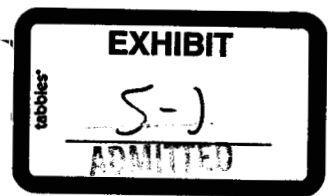
- Resold Local Exchange Telecommunications Services
- Resold Long Distance Telecommunications Services
- Facilities-Based Local Exchange Telecommunications Services
- Facilities-Based Long Distance Telecommunications Services
- Facilities-Based Private Line Telecommunications Services

Staff is recommending approval of the Application with conditions.

SMO:MAC:red\BH

Originator: Matt Connolly

Attachment: Original and Thirteen copies



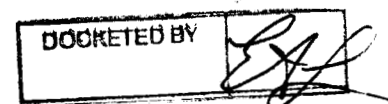
RECEIVED  
AZ CORP COMMISSION  
DOCKET CONTROL

2014 DEC 1 PM 3 06

**ORIGINAL**

Arizona Corporation Commission  
**DOCKETED**

DEC 01 2014



**STAFF REPORT**  
**UTILITIES DIVISION**  
**ARIZONA CORPORATION COMMISSION**

**GC PIVOTAL, LLC**  
**DOCKET NO. T-20787A-14-0367**

**IN THE MATTER OF THE APPLICATION OF GC PIVOTAL, LLC FOR A  
CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE FACILITIES-  
BASED AND RESOLD LOCAL EXCHANGE AND INTEREXCHANGE  
TELECOMMUNICATIONS SERVICES AND FACILITIES-BASED PRIVATE LINE  
SERVICE IN ARIZONA**

**DECEMBER 2, 2014**

## STAFF ACKNOWLEDGMENT

The Staff Report for GC Pivotal, LLC, Docket No. T-20787A-14-0367 was the responsibility of the Staff member listed below. Matt Connolly was responsible for the review and analysis of the GC Pivotal, LLC Application for a Certificate of Convenience and Necessity to provide Resold and Facilities-Based Local Exchange, Resold and Facilities-Based Long Distance and Facilities-Based Private Line Telecommunications Services within the State of Arizona, in addition to the petition for a determination that its proposed services should be classified as competitive.

A handwritten signature in black ink, appearing to read "Matt Connolly", is written over a horizontal line.

Matt Connolly  
Executive Consultant II

(see Attachment A). In addition to Arizona, GC Pivotal is seeking either authority or expanded authority in ten (10) jurisdictions (see Attachment B).

The officers and management team of GC Pivotal have a combined fifty-three (53) years experience in the telecommunications industry. GC Pivotal has two Network Operations Centers located in Chicago, Illinois and Waltham, Massachusetts it utilizes to provide customer service and respond to requests for maintenance and repair. The Network Operations Centers can be contacted via the toll free number of 1-866-469-5667 or via the email at CNO@globalcapacity.com.

GC Pivotal will have four employees located in Arizona providing field technician services. If a maintenance and repair issue arises pertaining to customer premise equipment owned by GC Pivotal, then that issue will be handled by either an employee or sub-contractor of GC Pivotal. If a maintenance and repair issue arises pertaining to leased network or facility assets, GC Pivotal will work with service or repair technicians for the owner or operator of the leased network or facility assets.

Customer complaints will be handled internally through the Applicant's customer service department. GC Pivotal will create a toll free number for customers to call regarding complaints. In addition, customers may contact GC Pivotal via email at customercare@globalcapacity.com.

GC Pivotal intends to offer private line services. In response to Staff's Data Request STF 1.15, GC Pivotal indicated that in order to provide facilities-based service it will be purchasing Megapath's network which is composed of equipment in collocation spaces (e.g., Digital Subscriber Line Access Multiplexers ("DSLAM"), routers, cable and racks), and applications used to provide service and equipment related to Megapath's points of presence and transport. The network consist of assets largely collocated in ILEC central offices. Security of the Applicant's equipment will be ensured by adherence to the collocation-based facilities' security guidelines and procedures. GC Pivotal will also be interconnecting with ILEC networks as needed to provide services to customers.

Based on the above information, Staff believes GC Pivotal possesses the technical capabilities to provide the services it is requesting the authority to provide in Arizona.

### **3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

A Protective Agreement was signed prior to the Applicant providing its financial statements. On October 21, 2014, GC Pivotal provided audited consolidated financial statements for 2012 and 2013 which included financial information for itself and a subsidiary.<sup>1</sup> The financial statements for year ending December 31, 2012, lists total assets of \$31,845,970; total equity of \$23,977,999 and net income of negative \$3,213,221. The financial statements for year ending December 31, 2013, lists total assets of \$30,777,249; total equity of \$20,233,353 and net income of negative \$3,713,213. The Applicant also provided notes to its financial statements.

---

<sup>1</sup> The subsidiary is Magenta netLogic, Ltd./Global Capacity Ltd., which includes GC Pivotal's Manchester, UK-based group of cloud application programmers. Magenta netLogic, Ltd./Global Capacity Limited does not sell telecommunications services. This subsidiary accounts for less than (one percent) 1% of the submitted financial data.

### *5.3 Quality Of Service*

In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that the Applicant should be ordered to abide by the same quality of service standards that were approved by the Commission for Qwest dba CenturyLink QC ("CenturyLink") in Docket No. T-01051B-13-0199 (Decision No. 74208).

### *5.4 Access To Alternative Local Exchange Service Providers*

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

### *5.5 911 Service*

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has stated that upon providing voice local exchange service, in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission ("FCC") 47 CFR Sections 64.3001 and 64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

### *5.6 Custom Local Area Signaling Services*

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

## **6. REVIEW OF COMPLAINT INFORMATION**

In its Application, the Applicant states that it has not had an Application for authority to provide service denied in any state or jurisdiction. The Applicant indicated that none of its officers, directors or partners have been or are currently involved in any civil or criminal investigation or been convicted of any criminal acts within the past ten (10) years.



of local exchange service and, as such, will have to compete with those existing companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments. The areas served by CenturyLink that the Applicant seeks to enter are served by wireless carriers and Voice over the Internet Protocol ("VoIP") service providers. This may also be the case in areas served by independent ILECs.

**7.1.2 The number of alternative providers of the service.**

CenturyLink and various independent ILECs provide local exchange service in the State. CLECs and local exchange resellers are also providing local exchange service. The areas served by CenturyLink that the Applicant seeks to enter are served by wireless carriers and VoIP service providers. This may also be the case in portions of the independent ILECs' service territories.

**7.1.3 The estimated market share held by each alternative provider of the service.**

CenturyLink and CLECs are the primary providers of local exchange service in CenturyLink's Service territories. Independent ILECs are the primary providers of local exchange service in their service territories.

**7.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.**

GC Pivotal does not have any affiliates that are alternative providers of local exchange service in Arizona.

**7.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.**

ILECs have the ability to offer the same services that the Applicant has requested the authority to provide in their respective service territories. Similarly, many of the CLECs, local exchange service resellers, wireless carriers and VoIP service providers also offer substantially the same services.

**7.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).**

The local exchange service market is:

**7.2.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.**

GC Pivotal does not have any affiliates that are alternative providers of interexchange service in Arizona.

**7.2.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.**

Both facilities-based interexchange carriers and interexchange service resellers have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly, many of the ILECs and CLECs offer similar interexchange services. The market the Applicant seeks to enter is also served by wireless carriers and VoIP service providers.

**7.2.6 Other indicators of market power which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).**

The interexchange service market is:

- a. One with numerous competitors and limited barriers to entry.
- b. One in which established interexchange carriers have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market.
- c. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.
- d. One in which the share of the market held by wireless carriers has increased over time, while that held by wireline carriers has declined.

**7.3 Competitive Services Analysis For Private Line Services**

**7.3.1 Private Line Services**

Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise. Private line service provides a means by which customers may transmit and receive messages and data among various customer locations over facilities operated and provided by the Applicant.

*8.1 Recommendations On The Application For A CC&N*

Staff recommends that Applicant's Application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be approved. In addition, Staff further recommends:

1. That the Applicant comply with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abide by the quality of service standards that were approved by the Commission for Qwest dba CenturyLink QC in Docket No. T-01051B-13-0199;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. The Applicant indicated that at the end of the first twelve months of operation the net book value of all Arizona assets that could be used in the provision of telecommunications service to Arizona customers will be \$5 to 7 million. The rate to be ultimately charged by the Applicant will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by GC Pivotal, the fair value information provided was not given substantial weight in this analysis;
7. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
8. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated; and
9. That the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. If the Applicant does not provide local exchange service to end users within (3) three years from the date of the Order in this docket, that the Applicant be required to

## Attachment A

The following are the jurisdictions in which GC Pivotal is currently authorized to provide telecommunications services:

1. Alabama
2. Arkansas
3. California
4. Connecticut
5. Delaware
6. District of Columbia
7. Florida
8. Georgia
9. Hawaii
10. Idaho
11. Illinois
12. Indiana
13. Iowa
14. Kansas
15. Kentucky
16. Louisiana
17. Maine
18. Maryland
19. Massachusetts
20. Michigan
21. Minnesota
22. Mississippi
23. Missouri
24. Montana
25. Nevada
26. New Hampshire
27. New Mexico
28. New York
29. North Carolina
30. North Dakota
31. Ohio
32. Oklahoma
33. Oregon
34. Pennsylvania
35. Rhode Island
36. South Carolina
37. South Dakota
38. Texas
39. Utah
40. Vermont
41. Virginia
42. West Virginia
43. Wisconsin
44. Wyoming